

Appl. No. 10/617,572
Amtd. Dated October 11, 2005

Attorney Docket No.: BAT-102
Reply to Office Action of August 11, 2005

REMARKS:**CLAIM AMENDMENTS**

To expedite prosecution, claim 1 has been amended to recite the features of claim 40 and to overcome the 35 USC 112 2nd paragraph rejection of claim 40. The features of claim 40 can be found at page 3, lines 3-12 and at page 15, lines 25-31. The features of claim 41 can be found at page 8, lines 18-20. As such, no new matter has been added with these amendments. The Applicants further submit that these amendments provide a desired scope of protection and are not being done for any reason related to patentability and the amendments do not narrow any limitation of any other claim within the meaning of the decision in *Festo*.

10 ALLOWABLE SUBJECT MATTER

The Applicant appreciates the Examiner's indication of allowable subject matter in claims 30-34, and 38-40.

CLAIM REJECTIONS**35 USC 112**

15 The Examiner has rejected claim 40 under 35 USC 112, 2nd paragraph as being indefinite. In making the rejection, the Examiner states that claim 40 recites in line 8 that "each second state focal length is twice as large another second state focal length". The Examiner argues that this is not clear. For examination purposes, it has been taken that all the second state focal lengths are equal to each other and twice as large than a smallest second state focal length.

20 The Applicant submits that the rejection of claim 40 is moot by virtue of its cancellation. However, the features of claim 40 have been incorporated into claims 1 and 21 where the feature in question has been written as each second state focal length is twice as large as another second state focal length. The Applicant submits that the claim 1 now recites (as claim 40 recited) that all the second state focal lengths are unique. This, in conjunction with the insertion of the 25 inadvertently omitted "as" makes the meaning of the feature clear. Namely, except for the smallest second state focal length, each of the second state focal lengths is twice as large as some other second state focal length. For example, the smallest focal length may have a value of A, the others may have values of 2A, 4A, 8A, etc. Furthermore, the Applicant submits that the

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Examiner's interpretation that all the second state focal lengths are equal to each other is inconsistent with the second state focal lengths being unique.

35 USC 102 – Nishimoto (GB 2171535)

Claims 1, 2, 4, 6-9, 14-17, 21-24, 27-28, 35-37 and 41 were rejected under 35 USC 102(b) as being anticipated by Nishimoto. The Examiner has rejected claims 10-13 and 18 as being obvious over Nishimoto and claims 3 and 5 as being obvious over Nishimoto in view of US Patent 6,356,366 to Popovich.

To expedite prosecution, the Applicants have amended claims 1 and 21 to recite the features of claim 40, which has been indicated as allowable by the Examiner. Thus, claims 1 and 21 are also believed to be allowable. In addition claims 30 and 38 have been rewritten in independent form as suggested by the Examiner and claims 29 and 37 have been cancelled. Claim 35 has been amended to depend from claim 30 and claim 39 has been amended to depend from claim 38. The rejections of claims 29 and 37 are moot by virtue of their cancellation. Claims 2, 4, 6-9, 14-17 are believed to be allowable by virtue of their dependence from claim 1. 22-24, 27-28 are believed to be allowable by virtue of their dependence from claim 21. Claims 35-36 are believed to be allowable by virtue of their dependence from claim 30.

CONCLUSION

The Applicant submits that, for the reasons set forth above, the restriction requirement is improper and all of the pending claims are allowable. Therefore, the Applicant respectfully requests that the Examiner enter the amendment, reconsider the application and issue a Notice of Allowance in the next Office Action.

Respectfully submitted,

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